

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**FAO-CARB No. 18 of 2020****Date of Decision: 5th October, 2020**

M/s Rays Power Infra Pvt. Ltd.

....Appellant

VERSUS

M/s Landmark Infonet Pvt. Ltd.

....Respondent

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Sushil Daga, Advocate for the Appellant.
Mr. Narinder Hooda, Advocate for the Respondent.

Dr. S. Muralidhar, J.

1. This is an appeal under Section 37 (1) (b) of the Arbitration and Conciliation Act, 1996 (hereinafter 'Act') against the order dated 17th August, 2020 passed by the learned Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram (hereafter the Commercial Court), in Arbitration Case No. 52 of 2020 filed under Section 9 of the Act.

2. By the aforesaid impugned order dated 17th August 2020, the learned Commercial Court directed the Appellant i.e. M/s Rays Power Infra Pvt. Ltd. (hereinafter 'Appellant/Tenant') to pay the Respondent i.e. M/s Landmark Infonet Pvt. Ltd. (hereinafter 'Respondent/Landlord') a suitable security in the shape of a bank guarantee to the tune of Rs. 2,13,76,709/-, upon furnishing of which, the accounts of the present Appellant/Tenant were directed to stand de-frozen forthwith. It was further directed that in case the requisite bank guarantee is not furnished in time, the accounts of the Appellant/Tenant shall remain attached to the aforementioned extent. The learned Commercial Court also issued directions pertaining to the period during which the impugned order would remain in force, the period during which the Respondent/Landlord could invoke the arbitration clause and the entitlement of the Respondent/Landlord to seek an extension of the operation of the instant order, in the event that there was a failure to invoke the arbitration clause within the stipulated time.

3. Notice of motion. Mr. Chetan Dhingra, Advocate assisting Mr. Narender Hooda, Senior Advocate, accepts notice on behalf of the Respondent.

4. With the consent of counsel, the appeal is taken up for final hearing and disposal.

5. The brief facts necessary for the purpose of this appeal are that the Respondent/Landlord is the owner of a plot in Sector 44, Gurugram together with the superstructure built thereupon. The entire third floor of the building, including the car parking area of four cars in the basement and parking area for three cars in the periphery of the building, was rented out by the Respondent/Landlord to the Appellant/Tenant by a lease deed dated 26th October, 2018 for a total period of 9 years at a monthly rent of Rs. 7,93,200/-, excluding the maintenance charges of Rs. 1,05,760/-. The total lease period was in the format of 3+3+3, with the initial period of three years being the lock-in period, which was to commence on 1st October, 2018.

6. On account of the lockdown in the wake of Covid-19 pandemic, the Appellant/Tenant expressed its inability to make payment of the rent and outstanding charges when it fell due and sought some more time by an e-mail dated 13th April, 2020. The events that transpired subsequently are disputed, with there being two respective versions of the Appellant/Tenant and the Respondent/Landlord. These need not to be examined at this stage, since it would be the subject matter of the proceedings hereafter. Also, complaints appear to have been filed in the local police station by the Appellant/Tenant as well as by the Respondent/Landlord against each other. These again need not be examined at this stage as they would be the subject matter of further proceedings in accordance with law.

7. The admitted position, however, is that on 19th June, 2020, the Respondent/Landlord issued a notice to the Appellant/Tenant seeking payment of Rs. 35,95,840/- within a period of 15 days from the date of the receipt of the notice. The Appellant/Tenant replied to the aforesaid notice of the Respondent/Landlord on 20th June, 2020. In the said reply, the Appellant/Tenant *inter alia* asked the Respondent/Landlord to adjust the said

sum from the security deposit of Rs. 47,59,200/-, already available with the Respondent/Landlord. The fact of the matter is that at present the Appellant/Tenant claims not to be in possession of the premises.

8. It appears that on 9th July 2020, the Appellant/Tenant filed a suit in the Court of Civil Judge (Junior Division), Gurugram in which the Respondent/Landlord appeared on 17th July, 2020 and filed an application under Section 8 of the Act, pointing out the existence of an arbitration clause in the lease deed. It appears that on the very next day the Respondent/Landlord filed Arbitration Case No. 52 of 2020 in the Commercial Court under Section 9 of the Act along with an application for ad-interim relief.

9. On 20th July 2020, an interim order was passed by the Commercial Court freezing two of the bank accounts of the Appellant/Tenant. Aggrieved by the said order, the Appellant/Tenant filed an appeal in this Court in which an order was passed on 31st July 2020, directing the learned Commercial Court to take a decision on the application under Section 9 of the Act “at the earliest”, with liberty being given to the Appellant/Tenant to file an application for de-freezing of the accounts on the basis of the pleas taken in the reply in the proceedings. Thereafter, on 17th August, 2020, after hearing both the sides, the impugned order was passed by the Commercial Court.

10. One of the pleas raised before us by Mr. Sushil Daga, Counsel appearing for the Appellant/Tenant, concerns the arbitrability of the dispute. The Court is of the view that the issue whether the dispute between the parties is arbitrable or not, in terms of the arbitration clause in the lease deed, is a point that can be urged by the Appellant/Tenant before the Arbitrator.

11. Next, it is submitted by Mr. Daga that there was no warrant for virtually the entire claim amount of the Respondent/Landlord being sought to be secured by the impugned order, particularly since even the first step of appointing the Arbitrator and filing a claim has not been taken by the Respondent/Landlord.

12. Upon a query being made by this Court, Mr. Narender Hooda, learned Senior Counsel, appearing for the Respondent/Landlord clarified that notice for the appointment of an Arbitrator has been issued to the Appellant/Tenant. According to the Respondent/Landlord the outstanding rent from 1st March, 2020 calculated for the balance lockdown period i.e. till 30th September 2021, would work out to be more than Rs.1.58 crores and this would be exclusive of the maintenance charges. Mr. Hooda, however, clarified that the security deposit in the sum of Rs. 47,59,200/- is available with the Respondent/Landlord.

13. It appears that the Appellant/Tenant is outside the premises. As of date and that there are stated to be some moveable assets of the Appellant/Tenant, which are still in the premises. Mr. Hooda claimed that the keys of the premises are still with the Appellant/Tenant. Mr. Daga, however, disputed this.

14. Having heard the above submissions, the Court is of the view that the equities would be balanced if the following directions are issued in substitution of the directions issued by the by impugned order dated 17th August, 2020 of the learned Commercial Court. Accordingly, it is directed that:

(i) On or before 12th October, 2020 at 10:30 am, the Appellant/Tenant will pay to the Respondent/Landlord a sum of Rs. 50,00,000/-, which sum shall then be kept by the Respondent/Landlord in a fixed deposit (FD), in its own name, with a copy of the fixed deposit receipt given forthwith to the Appellant/Tenant. The FD shall initially be for a period of one year and will be kept renewed during pendency of the arbitration. The said FD will not be encashed during the pendency of the arbitration proceedings.

(ii) At 10.30 a.m. on 12th October, 2020, the authorized representatives of both the Appellant/Tenant and the Respondent/Landlord shall remain present at the premises. The premises will be opened and the Appellant/Tenant will be permitted to remove all its moveable assets therein peacefully and without any hindrance. An inventory will be prepared of

what is removed and signed by both the parties. After this exercise is complete, the premises will be taken over by the Respondent/Landlord by placing its lock on the premises. Upon completion of the above steps the accounts of the Appellant/Tenant shall stand de-frozen forthwith.

(iii) Any observations made in the impugned order dated 17th August, 2020 of the Commercial Court will be treated as tentative and not as not affecting the independent final determination of the issues raised by the parties in the arbitration proceedings.

(iv) It will be open to the Appellant/Tenant to raise all the pleas it may have in relation to the arbitrability of the dispute as well as to the Respondent/Landlord in opposition to such plea, before the learned Arbitrator, who will decide such pleas in accordance with law, uninfluenced by any observation in the impugned order dated 17th August, 2020.

(v) The present order will be subject to modification by the Arbitrator in an application made by either party under Section 17 of the Act.

(vi) The last direction issued by the impugned order dated 17th August, 2020 i.e. in para 40 (iii), to the extent of requiring the Respondent/Landlord to invoke the arbitration clause within 90 days of the impugned order being passed, shall remain.

15. The appeal is disposed of in the above terms.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

5th October, 2020
jk

Whether speaking/reasoned Yes/No

Whether reportable Yes/No